

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

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| In the Matter of                               | ) |                            |
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|  | ) |                            |
| Clamor Broadcasting Network, Inc.              | ) | File No. EB-03-SJ-019      |
| Owner of Antenna Structure located atop of the | ) | NAL/Acct. No. 200332680004 |
| Atlantico Condominium of Naranjal Street,      | ) | FRN 0008-4033-88           |
| Levittown, Puerto Rico                         | ) |                            |
| Bayamon, Puerto Rico                           | ) |                            |

**FORFEITURE ORDER**

**Adopted: July 26, 2004**

**Released: July 28, 2004**

By the Chief, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of three thousand dollars (\$3,000) to Clamor Broadcasting Network, Inc. (“Clamor”), licensee of station WKVN-FM and owner of an unregistered antenna structure located atop of the Atlantico Condominium on Naranjal Street, Levittown, Puerto Rico for willful and repeated violation of Section 17.4(a) of the Commission’s Rules (“Rules”).<sup>1</sup> The noted violation involves Clamor’s failure to register its antenna structure.

2. On April 14, 2003, the Commission’s San Juan, Puerto Rico Office (“San Juan Office”) issued a *Notice of Apparent Liability for Forfeiture* (“NAL”) to Clamor in the amount of three thousand dollars (\$3,000).<sup>2</sup> Clamor filed a response on April 29, 2003.

**II. BACKGROUND**

3. On March 7, 2003, agents from the San Juan Office inspected Clamor’s antenna structure located atop the Atlantico Condominium in Levittown, Puerto Rico. The antenna structure consisted of a 120 foot tower on top of the condominium building which resulted in the total height above ground of the antenna structure being in excess of 200 feet. The antenna structure had a small hand-written sign that read “FCC Temporary Tower Registration 1011531.” The agents checked the Commission’s Antenna Structure Registration Database and found no record of the indicated registration number or any record of registration for this structure. The agents interviewed station WKVN-FM’s engineer, Rafael Cerra, who informed them that Clamor had filed a registration application for the structure on December 30, 1996, but Commission staff returned the application on March 19, 1997. When it returned the registration application, Commission staff informed Clamor that it needed a current Federal Aviation Administration (“FAA”) clearance in order for the Commission to register Clamor’s antenna structure. On July 8, 1999,

<sup>1</sup> 47 C.F.R. § 17.4(a).

<sup>2</sup> See *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200332680004 (Enf. Bur., San Juan Office, April 14, 2003).

the FAA issued a Determination of No Hazard to Air Navigation to Clamor. At the time of the inspection, Clamor did not present any evidence to prove that it had reapplied to register its antenna structure at any time after the original application was returned by the Commission. On April 14, 2003, the San Juan Office issued a *NAL* to Clamor for willful and repeated violation of Section 17.4(a) of the Rules. In response, Clamor claims that it did not willfully violate Section 17.4(a) of the Rules. Clamor also claims that it took the FAA two years to conduct a new aeronautical study and that it has been waiting on a response from the Commission to its July 20, 1999 filing of an antenna structure registration application.

### III. DISCUSSION

4. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended (“Act”),<sup>3</sup> Section 1.80 of the Rules,<sup>4</sup> and *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*.<sup>5</sup> In examining Clamor’s response, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.<sup>6</sup>

5. Section 17.4(a) of the Rules requires that the owner of any proposed antenna structure that requires notice of proposed construction to the FAA must register the structure with the Commission prior to construction. Clamor is the owner of the 220 foot antenna structure for station WKVN-FM. This structure required notice to the FAA, and thus Commission registration, because the structure exceeded 200 feet (60.96 meters) in height above ground.<sup>7</sup> From at least December 30, 1996, when Clamor unsuccessfully attempted to register its antenna structure, to March 7, 2003, when the Commission agents inspected Clamor’s still unregistered antenna structure,<sup>8</sup> we find that Clamor willfully<sup>9</sup> and repeatedly<sup>10</sup> failed to register its antenna structure with the Commission. Although Clamor contends that the FAA delayed two years in granting a new aeronautical study and that Commission staff delayed in replying to Clamor’s resubmitted antenna structure registration application in support of its arguments that it was diligent and that the violation was not willful, we note that Clamor did not request the aeronautical study

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<sup>3</sup> 47 U.S.C. § 503(b).

<sup>4</sup> 47 C.F.R. § 1.80.

<sup>5</sup> 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

<sup>6</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>7</sup> 47 C.F.R. § 17.7.

<sup>8</sup> Commission records indicate that Clamor’s antenna structure was registered on May 19, 2003.

<sup>9</sup> Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘willful’, when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act . . . .” See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387-88 (1991).

<sup>10</sup> As provided by 47 U.S.C. § 312(f)(2), a continuous violation is “repeated” if it continues for more than one day. The *Conference Report* for Section 312(f)(2) indicates that Congress intended to apply this definition to Section 503 of the Act as well as Section 312. See H.R. Rep. 97<sup>th</sup> Cong. 2d Sess. 51 (1982). See *Southern California Broadcasting Company*, 6 FCC Rcd 4387, 4388 (1991) and *Western Wireless Corporation*, 18 FCC Rcd 10319 at fn 56 (2003).

from the FAA until February 24, 1999,<sup>11</sup> almost two years after Commission staff returned Clamor's first antenna structure registration application. Clamor's two year delay in seeking an FAA determination resulted in its willful violation of Section 17.4(a) of the Rules. Clamor was fully aware that it needed the aeronautical study in order to register the antenna structure. Further, Clamor did not register its antenna structure until May 19, 2003, more than four years after the FAA study, and almost six years after being informed by Commission staff of the actions necessary to register the antenna structure. Moreover, Clamor does not dispute that the violation was repeated. Finally, although Clamor claims to have resubmitted its antenna structure registration application to the Commission on July 20, 1999, there is no evidence to indicate that Clamor actually did so.

#### IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,<sup>12</sup> Clamor Broadcasting Network, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of three thousand dollars (\$3,000) for its willful and repeated failure to register its antenna structure in violation of Section 17.4(a) of the Rules.

9. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.<sup>13</sup> Payment may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should reference NAL/Acct. No. 200332680004 and FRN 0008-4033-88. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Group, 445 12th Street, S.W., Washington, D.C. 20554.<sup>14</sup>

10. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail, Return Receipt Requested, to Clamor Broadcasting Network, Inc., P.O. Box 40000, Bayamon, Puerto Rico 00958-9000.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon  
Chief, Enforcement Bureau

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<sup>11</sup> Information received from the FAA indicates that Clamor requested the aeronautical study on February 24, 1999. We also note that the FAA issued its Determination of No Hazard on July 8, 1999, approximately four and one half months after Clamor's request.

<sup>12</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

<sup>13</sup> 47 U.S.C. § 504(a).

<sup>14</sup> See 47 C.F.R. § 1.1914.